

**INTERGOVERNMENTAL AGREEMENT
CONCERNING LAND DEDICATIONS OR PAYMENTS IN LIEU
FOR SCHOOL PURPOSES**

THIS AGREEMENT is entered into by and between the Weld County School District RE-4 ("School District"), a political subdivision of the State of Colorado, and the Town of Windsor, Colorado ("Town"), a municipal corporation of the State of Colorado, to be effective as of the 16th day of August, 1999 ("Effective Date").

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to section 29-20-105, C.R.S., for the purpose of planning or regulating the development of land, including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

B. Section 22-54-102(3)(a), C.R.S., authorizes local governments to cooperate with school districts through intergovernmental agreements to fund, construct, maintain, or manage capital construction projects, provided that funding is provided by a source of local government revenue that is otherwise authorized by law.

C. The growth in residential land development in the Town necessitates the building of additional school facilities and/or improvements to existing school facilities in order to accommodate the corresponding increases in the student population. Requiring, in connection with new construction within the Town, the dedication of sites and land areas for schools, or payments in lieu thereof ("in-lieu payments") will help to meet such demand.

D. The School District has adopted certain planning standards and a methodology for calculating the nature and extent of the impact any proposed land-use approval by the Town will have on the adequacy of school sites for the School District and the future residents thereof.

E. The Town is authorized to adopt appropriate ordinances and regulations for the purpose of promoting and preserving the public health, safety, and welfare of the citizens of the Town.

F. There is an essential nexus between the need for the dedication of school sites or in-lieu payments and the legitimate local governmental interest of promoting and preserving the public health, safety, and welfare of the citizens of the Town and the School District.

G. In order to provide adequate school facilities to serve new residential land developments, it is imperative that the School District be consulted regarding land dedication or in-lieu payments for school sites in order to achieve rational and cost-effective planning and to assure that the dedication or in-lieu payment requirements are roughly proportional to the impact of the proposed use on the Town and School District.

H. School land dedication or in-lieu payments serve to implement the Town's Comprehensive Plan, by making provisions for public improvements in a manner appropriate for a modern, efficiently functioning Town; and by implementing those provisions of the Plan that are intended to ensure that new development does not negatively impact the provision of municipal services.

I. The Town, upon consideration of the effect of residential land developments and the ability of the School District to provide school facilities in the Town, has determined that it is in the best interests of the citizens of the Town to enter into an Intergovernmental Agreement with the School District for the purpose of providing for the dedication of land for school sites or payments in lieu thereof as provided in this Agreement.

J. The Town and School District desire to define their respective rights and obligations with respect to the planning, collection, and use of such land dedications and in-lieu payments.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives, policies, and findings expressed in the Recitals to this Agreement, incorporated by this reference, and the mutual promises contained in this Agreement, the Town and School District agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings specified below:

"Developer" means the person or entity seeking land-use approval from the Town and the party responsible for land dedication or in-lieu payments hereunder.

"Dwelling Unit" means a housekeeping unit designed and used for occupancy by a single individual or a family, containing cooking, living, sleeping, and sanitary facilities and having a separate entrance.

"Land Development Project" or "Project" means any proposed subdivision approval or any subsequent amendment to a previously approved subdivision that will result in new or additional Dwelling Units or a population density or population greater than that contemplated by the previously approved subdivision proposal.

"Methodology" means the formulas, based upon the School Planning Standards, for calculating land dedication requirements and in-lieu payments, as shown on Exhibit A, attached hereto and incorporated by this reference.

"School Planning Standards" or "Standards" means the adopted School District land-use standards set forth on Exhibit B, attached hereto and incorporated by this

reference, that include student yields per dwelling unit for the three separate school levels, school facility enrollment capacities, school site acreage requirements, and the fair market value of real property that is located within the boundaries of both the Town and the School District.

2. Determination of Land Dedication or In-Lieu Payment Requirements.

a. The Town and School District find and agree that the current School Planning Standards in Exhibit B are reasonable, that there is an essential nexus between the dedication or payment contemplated and a legitimate local government interest, and that the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed Land Development Project.

b. Prior to or at the time that any proposed plans are submitted to the Town for any annexation or Land Development Project, the Superintendent of the School District or a designee will meet with the Developer, for the purpose of determining whether the School District desires the dedication of any land for schools within the Project, consistent with the School Planning Standards. In the event the School District requests a dedication of land that, based upon the application of the Standards and Methodology, results in a parcel that in itself would be of insufficient size for a school site, the School District agrees to discuss with the Developer:

i. the potential reservation by the Developer or acquisition by the School District of the balance of the property needed to provide an adequate site; or

ii. an in-lieu payment as provided in this Agreement in the event the dedication of sites and land areas is not deemed feasible or in the best interests of the School District.

c. Upon formal submission of any annexation application or any proposed Land Development Project to the Town, the Town shall submit the Developer's proposal to the School District for its review, comments, and recommendations concerning the adequacy of school sites and facilities within the context of the proposed Land Development Project. The School District shall promptly review the proposal and shall promptly submit its comments and recommendations to the Town.

d. The School District shall make a determination concerning the impact of the Project upon the adequacy of school sites and facilities based upon the School Planning Standards which are in effect at the time the Developer's proposal is submitted to the School District for its review.

e. Upon receipt of the School District's determination as to whether land shall be dedicated, the Town shall, to the extent permitted by law, implement said determination as provided in subsection (f) below.

f. The Town agrees that as a condition of final approval of a subdivision plat for a Land Development Project, it will: (i) require proof of the dedication of land or the appropriate reservation of land for future dedication to the School District in accordance with Section 3 below, or (ii) require proof that the cash-in-lieu payment, as described in paragraph 4 below, has been paid to and received by the School District. The Superintendent of the School District, or the Superintendent's designee, shall provide such proof in a timely manner to the clerk of the Town. This requirement shall apply to each Land Development Project for which application is made on or after the effective date of this Agreement, subject only to the exemptions contained in Section 7 below.

3. Conveyance of Dedicated Land.

a. If land is to be dedicated to the School District as part of the approval of any Land Development Project, the School District shall notify the Town in writing. Upon receipt of such notification, the Town shall thereafter accept the final plat for the Land Development Project, or any portion of it, for recording only if such plat provides for the contemporaneous dedication and conveyance of such land to the School District.

b. If land is to be reserved for future dedication to the School District as part of the approval of any Land Development Project, the School District shall so notify the Town in writing. Upon receipt of such notification, the Town shall thereafter accept the final plat for the Land Development Project, or any portion of it, for recording only if such plat shows the reservation of such land for such future dedication to the School District.

c. Dedication of the reserved site shall occur no later than the date of final approval of the Land Development Project. Prior to the issuance of the first residential building permit for the Land Development Project, the dedicated site shall have overlot grading, direct access to a publicly dedicated street improved to Town standards, and utilities stubbed to the site. The School District shall promptly certify to the Town in writing that the dedication has been made. In the event that the School District determines, in its sole discretion, that the dedication of a reserved site is necessary prior to the issuance of any building permit for the Project within which such site is located, the School District shall so notify the person(s) shown by the records of the Weld County Assessor as being the then current owner(s) of such site. Said notice shall be sent by certified mail, return receipt requested. Within 60 days of the mailing of said notice, the reserved property that is the subject of the mailing shall be dedicated to the School District by the owner(s) thereof.

d. Title to the dedicated site shall be conveyed to the School District by general warranty deed, free and clear of all liens, encumbrances, and exceptions (except those approved in writing by the School District), including, without limitation, real property taxes, which will be prorated, and paid as of, the date of conveyance. The Developer shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property.

4. Assessment and Amount of In-Lieu Payment.

In the event that the School District determines, under Section 2. above, that the dedication of land with respect to a particular Land Development Project would not further the planning objectives of the School District, either because the parcel that could be required to be dedicated would be of insufficient size for a school site or because the location of the dedicated site would be inappropriate, then the amount of the in-lieu payment shall be determined and paid to the School District, according to the Methodology then in effect, prior to approval and recording of the final plat for the Land Development Project. In the event the Developer obtains approval from the Town for the phasing of the Land Development Project that results in separate filings and final plats for each phase, the Developer may defer the payment of the in-lieu payment until the recording of the final plat for each phase; provided, however, that in such case the amount of the payment shall be based upon the School Planning Standards and Methodology in effect at the time of the approval of each phase.

5. Methodology for Assessing In-Lieu Payments

a. The parties agree that the Methodology has been developed in a manner so as to fairly apportion the cost of acquiring school sites made necessary by residential development, and to ensure that any in-lieu payments will be used for the purposes of school site acquisition and development and capital facilities planning within the senior high school feeder attendance area boundaries that include the Land Development Project for which the payment is being made. All dedication requirements and in-lieu payments shall be based upon the School Planning Standards and the Methodology, as the same may be amended from time to time in accordance with subparagraph (b) below, which are in effect at the time the Developer applies for land-use approval.

b. The School Planning Standards and Methodology adopted pursuant to the provisions of this Agreement shall be updated annually from the date of its submission to the Town. A copy of updated versions of Exhibits A and B, reflecting such changes, shall be furnished to the Town within 30 days after its adoption by the School District. The Town shall hold a public hearing before revising the in-lieu payments based upon any revisions to the School Planning Standards and/or the Methodology.

6. Collection, Deposit, and Expenditure of In-Lieu Payments.

a. All in-lieu payments paid to the School District shall be properly identified and promptly deposited into a separate interest bearing account in the name of the School District authorized by sections 24-75-601 to -605, C.R.S. The School District shall be the owner of the funds in the account.

b. The funds deposited into the account shall be earmarked and expended solely for the purposes of school site acquisition and development and capital facilities planning within the senior high school feeder attendance area boundaries that include the Land Development Project for

which the payment was made. Subject to the time limitations contained in this Agreement, the time for, nature, method, and extent of such planning or development shall be within the sole discretion of the School District.

c. Except as otherwise provided in this Agreement, any in-lieu payments which have not been used for the purposes of school site acquisition and development and capital facilities planning within ten years of the date of collection shall be refunded, with interest at the rate of 6 percent per annum compounded annually, to the person(s) shown by the records of the Weld County Assessor as being the then-current owner(s) of the property which was subject to the payment (the "Property Owner"), as of the ten-year anniversary of the date of collection. Notice of such refund opportunity shall be mailed by the School District to the Property Owner's address as reflected in the records of the Weld County Assessor at the end of the ten-year period. If the Property Owner does not file a written claim for such refund with the School District within 90 days of the mailing of such notice, such refund shall be forfeited and shall revert to the School District to be utilized for capital facilities or improvements that will benefit the residence(s) for which the payment was made.

d. The School District may request the Town to extend the ten-year period of time specified in the previous subsection. Such request shall be made at a public hearing before the Town, which may for good cause shown, and in its discretion, extend such period of time as the Town deems reasonable and necessary.

7. Exemptions.

a. The following shall be exempted from land dedication requirements or in-lieu payments:

i. Previously-approved and recorded Land Development Projects, other than those phases for which final plats have not been approved.

ii. Alteration or expansion of a Dwelling Unit.

iii. Replacement of a Dwelling Unit.

iv. Construction of an accessory building, or structure.

v. Long-term care facilities or group homes as defined in the Town's ordinances.

vi. Land Development Projects (or portions thereof) that are subject to recorded covenants permanently restricting the age of all residents of all dwelling units such that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

vii. Commercial developments.

b. Any claim of exemption as provided in this Section 7 must be made no later than the time of submission of the Project for approval. Any claim not so made may be deemed by the School District and the Town to have been waived by the Developer.

8. Annual Report, Accounting, and Audit.

a. The School District shall establish and maintain an accounting system to ensure that all in-lieu payments are expended in accordance with Section 6.b. above.

b. The School District and the Town shall cause an audit to be performed annually of the in-lieu payments collected and expended in accordance with this Agreement. The audit shall be conducted in accordance with generally accepted accounting principles for governmental entities and may be part of any general audit annually conducted by the School District. A copy of said audit shall be furnished to the Town. The cost of the audit shall be paid from the School District's general fund.

c. At any time deemed necessary, the Town may request an accounting from the Superintendent of the School District concerning the expenditure of the in-lieu payments made to the School District.

9. Term.

The term of this Agreement shall commence on the effective date hereof and continue for a period of ten years thereafter unless the Town repeals the implementing ordinance adopted by the Town concurrent with this Agreement. This Agreement shall automatically renew for an additional ten years unless one party notifies the other of intent to non-renew at least 30 days prior to expiration. Should the Agreement expire, the provisions of Section 6.c. pertaining to refunds shall remain in effect until fully implemented.

10. Miscellaneous.

a. Faith and Credit. Neither party shall extend the faith or credit of the other to any third person or entity.

b. Amendments. This Agreement may be amended only by mutual agreement of the parties and shall be evidenced by a written instrument authorized and executed with the same formality as accorded this Agreement.

c. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery

or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Town of Windsor
301 Walnut Street
Windsor, Colorado 80550
Attention: Town Administrator

Weld County School District RE-4
Attention: Superintendent of Schools
1020 Main Street
P. O. Box 609
Windsor, Colorado 80550-0609

Notice given by mail shall be effective three days after it is deposited in the United States mail depository correctly addressed and with sufficient postage for delivery.

d. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.

e. Severability. If this Agreement, or any portion of it, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the Agreement.

f. Indemnification. The Town agrees to cooperate in the defense of any legal action that may be brought contesting the validity of this Agreement or the implementing ordinances. The School District shall be responsible for defending such claim (whether filed against the Town, the School District, or both) and for the payment of any final monetary judgment entered against the Town in any such action. Nothing contained in this Agreement shall constitute any waiver for the Town or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive termination of the Agreement, and be enforceable until all claims are precluded by statutes of limitation.

g. Survival. Any provision or obligation of this Agreement, for the benefit of either party, that has not been fully performed or discharged at the time of termination shall survive such termination and continue to bind the party until the expiration of any applicable legal or equitable period of limitation.

h. Financial Obligations. This Agreement shall not be deemed a pledge of the credit of the Town or the School District, or a collection or payment guarantee by the Town to the School District. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal or district debt or financial obligation.

i. No Third Party Beneficiaries. None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Town or the School District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

j. Recording of Agreement. This Agreement shall be recorded with the Weld County Clerk and Recorder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall be in full force and effect the day and year first above written.



ATTEST:

Cathy M. Kennedy
Town Clerk

APPROVED AS TO LEGAL FORM:

[Signature]
Town Attorney

TOWN OF WINDSOR, COLORADO

By: W. Wayne Math
Mayor

August 9, 1999
Date

APPROVED AS TO CONTENT:

[Signature]
Town Administrator

ATTEST:

Lonnie Rodgers, Jr.
Secretary

**WELD COUNTY SCHOOL DISTRICT
RE-4**

By: Donald H. Scott
President
Board of Education

APPROVED AS TO LEGAL FORM:

Richard Bump
School District Attorney

August 16, 1999
Date

Exhibit A

METHODOLOGY FOR CALCULATING LAND DEDICATION REQUIREMENTS AND IN-LIEU PAYMENTS

Based on the School District Planning Standards contained in Exhibit A, calculation of land dedication or in-lieu fees use the following procedures:

	Yield	Site Requirement Acres	Current Capacity Requirement	Acres of Land Per Student	Acres of Land Per Unit	Developed Land Value Per Acre	Cash in Lieu Per Unit
SINGLE FAMILY							
Elementary	0.386	10.00	400.00	0.025	0.00965	\$20,000.00	\$193
Middle School	0.195	25.00	700.00	0.036	0.00696	\$20,000.00	\$139
High School	0.220	50.00	800.00	0.063	0.01375	\$20,000.00	\$275
Total District	0.801	85.00		0.123	0.03036		\$607
MULTI FAMILY							
Elementary	0.105	10.00	400.00	0.025	0.00263	\$20,000.00	\$53
Middle School	0.060	25.00	700.00	0.036	0.00214	\$20,000.00	\$43
High School	0.035	50.00	800.00	0.063	0.00219	\$20,000.00	\$44
Total District	0.200	85.00		0.123	0.00696		\$140

Exhibit B

School District Planning Standards

1. Student Yields

Elementary	0.386
Middle School	0.195
High School	0.220
Total	0.80

2. Capacity

Elementary	400.00
Middle School	700.00
High School	800.00

3. Site Requirement

Elementary	10 acres
Middle School	25 acres
High School	50 acres

4. Developed Land Value*

\$20,000.00

*Per Town of Windsor Request

TOWN OF WINDSOR

ORDINANCE NO. 2000 - 1071

BEING AN ORDINANCE INCREASING THE PER ACRE VALUE OF LAND FOR PURPOSES OF CALCULATING PAYMENT IN LIEU OF LAND DEDICATION FOR SCHOOL PURPOSES FOR LAND DEVELOPMENT PROJECTS IN THE TOWN OF WINDSOR, COLORADO.

WHEREAS, by properly adopted ordinances, the Board of Trustees has established land dedication requirements, or cash payments in lieu thereof, for school purposes for land development projects in the Town of Windsor, Colorado; and

WHEREAS, the aforesaid ordinances are applicable to Weld County School District RE-4, Poudre School District R-1, and Thompson School District R2-J; and

WHEREAS, since the adoption of the aforesaid ordinances, the costs of acquisition of land for school purposes have increased and in accordance with the increased costs, the per acre value of developed land in the original ordinances should be increased;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The value of developed land per acre for purposes of calculating payments in lieu for school purposes shall be increased from \$20,000 per acre to Forty Thousand Dollars (\$40,000.00) per acre.
2. Upon the effective date of this Ordinance, all calculation of payments in lieu for school purposes for properties within Weld County School District RE-4, Poudre School District R-1, and Thompson School District R2-J shall be calculated using the \$40,000 value as aforesaid.
3. In the opinion of the Board of Trustees of the Town of Windsor, Colorado, this Ordinance is necessary for the preservation of the public peace, health, and safety and shall become effective immediately.

Introduced, considered favorable on reading, and ordered published this 9th day of October, 2000.

TOWN OF WINDSOR, COLORADO

By W. Wayne Malt
Mayor

ATTEST:

Cathy M. Kennedy
Town Clerk

